

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS**

**BRIAN FERRY, individually and
on behalf of others similarly situated,**

Plaintiffs,

v.

**SGS CONTROL SERVICES, INC. and SGS
North America, Inc.**

Defendants.

United States Courts
Southern District of Texas
FILED

JUN 08 2006

Michael N. Milby, Clerk of Court

COMPLAINT

INTRODUCTION

1. This is a Fair Labor Standards Act collective action brought by plaintiff employees for defendants' unlawful refusal to pay overtime at the premium rate of time and one half for all hours worked over forty in a work week.
2. Plaintiffs seek unpaid overtime wages, liquidated damages, costs and attorneys' fees as well as declaratory relief under the Fair Labor Standards Act (FLSA), 29 U.S.C. §201 *et seq.*

JURISDICTION

3. Jurisdiction is conferred upon this Court by 29 U.S.C. §216(b) of the Fair Labor Standards Act, by 28 U.S.C. §1331, this action arising under laws of the United States, and by 28 U.S.C. §1337, this action arising under Acts of Congress regulating commerce.
4. This Court has supplemental jurisdiction over any state claim raised by virtue of 28 U.S.C. §1367(a).

VENUE

5. Venue is proper in this district pursuant to 28 U.S.C. §1391(b). The cause of action arose in this District. Plaintiff was employed in Freeport, Texas in Brazoria County.
6. Plaintiffs reside in this District. Defendant resides in this District.

PARTIES

A. Plaintiffs

7. The named plaintiff FERRY is an employee of defendants. A Consent to Sue for this named plaintiff is attached at the back of this complaint.
8. Plaintiff FERRY is a resident of Clute, Texas.
9. Plaintiff was engaged in commerce while working for defendants.
10. The terms "plaintiff" or "plaintiffs" as used in this complaint refers to the named plaintiff and all inspectors who are not paid time and one half overtime pay for hours over 40, pursuant to the collective action provision of 29 U.S.C. §216(b).
11. Upon information and belief, defendants regularly engage inspectors without payment of time and one half overtime premium pay.

B. Defendant

12. SGS CONTROL SERVICES, INC. and SGS NORTH AMERICA, INC. are corporations which includes the operation of inspection services throughout the United States and the world. Upon information and belief the defendant corporations had gross revenues in excess of \$500,000 for all relevant periods herein.
13. The defendant SGS CONTROL SERVICES, INC. s' offices are located at 20 Lafayette St., Carteret, NJ 07008.
14. The defendant SGS NORTH AMERICA, INC.'s offices are located at 1415 Garden

St., PO Box 252, Hoboken, NJ 07030.

15. Upon information and belief, defendants operate an enterprise engaged in commerce within the meaning of the FLSA.
16. For each of the 3 years preceding the filing of the initial complaint herein, defendants have employed 2 or more individuals "handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce."

FACTS

17. Plaintiff is employed by defendants.
18. Plaintiff FERRY began employment with SGS on or about September 17, 2002.
19. Plaintiff's job was to perform inspections for the shipping industry.
20. Plaintiff regularly worked more than 40 hours per week for defendant.
21. Defendants failed to pay plaintiffs overtime compensation at the rate of time and one-half the regular rate for all hours worked over 40 as required by the FLSA.
22. Defendants failed to pay overtime compensation to plaintiffs with the plaintiffs' regular wages or as soon thereafter as practical. Defendants failed to pay overtime compensation on a timely basis under the FLSA.
23. Defendants' failure to pay plaintiffs the proper wages as required by law was willful.
24. All actions and omissions described in this complaint were made by defendants directly or through their supervisory employees and agents.

CAUSE OF ACTION (OVERTIME)

25. Defendants failed to pay time and one half premium overtime wages to the plaintiffs on a timely basis and in an amount required by law, is in violation of the Fair Labor

Standards Act, 29 U.S.C. §203, 207 et seq. and its implementing regulations.

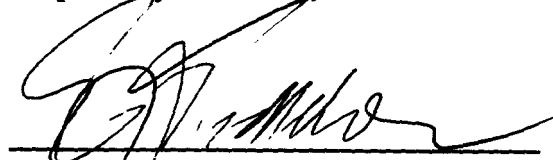
26. Defendant's failure to comply with the FLSA caused plaintiffs to suffer loss of wages and interest thereon.

WHEREFORE, plaintiffs request that this Court enter judgment or an order to plaintiffs:

- A. Declaring that the defendants violated the Fair Labor Standards Act;
- B. Declaring that the defendants' violations of the FLSA were willful;
- C. Awarding damages for their claims of unpaid wages as secured by the Fair Labor Standards Act as well as an equal amount in liquidated damages, plus liquidated damages for any overtime pay that was paid late;
- D. Awarding the plaintiffs' costs, including expert witness expenses, and reasonable attorneys' fees; and
- E. Granting such further relief as the Court finds just.

Dated: June 2, 2006

Respectfully Submitted,



Edward Tuddenham (TX Bar # 20282300)
272 W. 107th St. # 20A
New York, NY 10025

Dan Getman, Esq.
Getman Law Office
9 Paradies Lane
New Paltz, NY 12561
(845) 255-9370

ATTORNEYS FOR PLAINTIFF

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Brian Ferry

DEFENDANTSSGS Control Services, Inc.
SGS North America, Inc.County of Residence of First Listed Defendant Middlesex, New Jersey
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

(c) Attorney's (Firm Name, Address, and Telephone Number)Dan Getman/Ed Tuddenham, Getman Law Office 9 Paradies Lane,
New Paltz, New York 12561 (845)255-9370**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | |
|-----------------------------------------|---------------------------------------------------------------|---------------------------------------------------------------|---------------------------------------------------------------|
| Citizen of This State | PTF <input type="checkbox"/> 1 DEF <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | PTF <input type="checkbox"/> 4 DEF <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 540 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTIONCite the U.S. Civil Statute under which you are filing. (Do not cite jurisdictional statutes unless diversity):
FLSA, 29 U.S.C. sec 203, 207 et seq. and its implementing regulations

Brief description of cause:

Defendants failed to pay time and one half premium overtime wages to the plaintiffs on a timely basis**VII. REQUESTED IN COMPLAINT:**☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

6.5.06

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

FEE PAID